

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

CENTRO PRESENTE, a membership organization,
et al.,

Plaintiffs,

No. 1:18-cv-10340-DJC

V.

DONALD J. TRUMP, President of the United States, in his official capacity, *et al.*,

Defendants.

JOINT STATUS REPORT

Pursuant to the Court’s September 24, 2019 Order, *see* ECF No. 103, Plaintiffs Centro Presente, *et al.* (“Plaintiffs”) and Defendants Donald J. Trump, *et al.* (“Defendants”) respectfully submit this Joint Status Report. Reference is made throughout to the parties’ previous Joint Status Report filed on September 20, 2019, ECF No. 101 (the “September Status Report”).

1. Bilateral Agreement with El Salvador

On Monday, October 28, 2019, the Department of Homeland Security (“DHS”) announced that the United States reached a bilateral agreement with El Salvador to extend TPS protections for Salvadoran nationals through at least January 4, 2021. Press Release, DHS, U.S. and El Salvador Sign Arrangements on Security & Information Sharing; Give Salvadorans with TPS More Time (Oct. 28, 2019), <https://www.dhs.gov/news/2019/10/28/us-and-el-salvador-sign-arrangements-security-information-sharing-give-salvadorans>. DHS has not yet published a Federal Register Notice memorializing the agreement, but Defendants expect that the forthcoming Federal Register Notice will provide further detail regarding an agreement that provides Salvadoran TPS holders with an additional 365 days after the issuance of any mandate

to the district court reversing the preliminary injunction, if applicable, in the *Ramos* litigation discussed below.

2. *Ramos v. Nielsen*, No. 3:18-cv-1554-EMC (N.D. Cal.), appeal filed, No. 18-16981 (9th Cir.)

As the parties described in the September Status Report, a three-judge panel of the Ninth Circuit heard oral arguments in the *Ramos* appeal on August 14, 2019. Following the argument, the Court issued an order directing the parties to submit supplemental briefs concerning the District Court's determination of proceeding beyond the administrative record and the scope of the administrative record. Order, *Ramos v. Nielsen*, No. 18-16981 (9th Cir. Aug. 21, 2019), ECF No. 71. The supplemental briefing was completed on October 4, 2019, and the appeal remains pending.

Pursuant to this Court's Order granting the Joint Motion, ECF No. 81, the deadline for Plaintiffs to take depositions is stayed pending the disposition of the *Ramos* appeal by a three-judge panel of the Ninth Circuit. The parties will also submit a status report within fourteen days of a decision by the three-judge panel of the Ninth Circuit.

3. Proceedings in this Action Following Disposition of the *Ramos* Appeal

Upon entry of a decision by a three-judge panel of the Ninth Circuit, either affirming or reversing the District Court's injunction, Plaintiffs intend to proceed with all discovery in this action, including deposition testimony. Defendants contend that the nature of any future proceedings will depend on whether the appeal is affirmed or reversed.

If the *Ramos* injunction is affirmed, Defendants will seek to extend the current stay of deposition testimony. As noted *supra*, Plaintiffs will seek to proceed with discovery. Regardless, the parties agree that, if a three-judge panel affirms the preliminary injunction, they

should meet-and-confer following that affirmance to discuss next steps and then file a status report within fourteen days of the decision.

If the *Ramos* preliminary injunction is vacated, either in whole or in part, the parties agree that this action should proceed to a disposition on the merits in consideration of the TPS termination dates.¹ At this time, however, the parties disagree on the scope of any such further proceedings. The parties are still conferring as to the principal disputed discovery matters outlined in the September Status Report. Subject to the resolution of those discovery matters, the parties propose submitting a status report to identify their respective positions addressing the merits.

4. *Saget v. Trump*, No. 1:18-cv-1599-WFK-ST (E.D.N.Y.), appeal filed, No. 19-1685 (2d Cir.)

On April 11, 2019, the United States District Court for the Eastern District of New York issued a decision that preliminarily enjoined and restrained the Government from terminating TPS for Haiti. *Saget v. Trump*, 375 F. Supp. 3d 280 (E.D.N.Y. 2019). On June 6, 2019, the Government appealed the injunction to the United States Court of Appeals for the Second Circuit. The Government filed its opening brief on September 19, 2019. Plaintiff-Appellees' brief is due on December 19, 2019, and briefing is currently scheduled to be completed in January 2020.

5. Written Discovery in this Action Since the September Status Report

In the September Status Report, the parties explained that Defendants had notified Plaintiffs on September 18, 2019 that an additional revised privilege log would be forthcoming reflecting the withdrawal of Defendants' claims of privilege over approximately 500 documents,

¹ Defendants reserve the right to revisit whether a stay is appropriate in the future to the extent there is consideration of *en banc* review by the Ninth Circuit or a party petitions the Supreme Court for certiorari.

along with a revised description for a small set of entries. Defendants produced this revised privilege log on September 23, 2019. Defendants sent a further revised privilege log on October 17, 2019. The parties have exchanged letters regarding Defendants' privilege assertions and are in the process of scheduling a meet and confer.

6. Unresolved Discovery Issues²

In the September Status Report the parties set out their respective positions with respect to three principal discovery issues: (i) Discovery from White House Custodians; (ii) Privilege Assertions; and (iii) Depositions. The parties are at an impasse with respect to Discovery from White House Custodians at this time, subject to the Court's May 15, 2019 order addressing Plaintiffs' motion to compel. *See* ECF No. 89. The parties are continuing their conferrals with respect to Defendants' Privilege Assertions and Depositions; and Plaintiffs may commence motion practice in the near future if a resolution is not reached.

7. Other.

The parties do not request a live conference before the Court at this time, but the parties would be glad to appear if the Court so wishes.

² Plaintiffs reserve the right to advance all of their discovery requests. To the extent the Court permits further discovery, Defendants contend that discovery should be limited to the issues discussed in this section.

Respectfully submitted,

CENTRO PRESENTE, *et al.*

By their attorneys,

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Dated: October 31, 2019

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants.

Dated: October 31, 2019

/s/ Kevin P. O'Keefe